**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 479 OF 1992**

Union of India ..Appellants

versus

Hiralal Ramanlal ..Respondents

**AND**

**FIRST APPEAL NO.489 OF 1992**

Union of India ..Appellants

versus

M/s. Sakharam Bhaurao & Son. ..Respondents

**AND**

**FIRST APPEAL NO. 490 OF 1992**

Union of India ..Appellants

versus

M/s. Hiralal Ramanlal ..Respondents

**AND**

**FIRST APPEAL NO. 769 OF 1992**

Union of India ..Appellants

versus

M/s. Ramesh Bhimaji ..Respondents

**AND**

**FIRST APPEAL NO. 771 OF 1992**

Union of India ..Appellants

versus

M/s. Madhavji Harjibhai & Co. ..Respondents

**AND**

**FIRST APPEAL NO. 1133 OF 1992**

Union of India ..Appellants

versus

Bhikaji Dashrath Andarsul ..Respondent

**AND**

**FIRST APPEAL NO. 1143 OF 1992**

Union of India ..Appellants

versus

Rameshwar Lalchand Attal ..Respondent

**AND**

**FIRST APPEAL NO. 1202 OF 1992**

Union of India ..Appellants

versus

M/s. Bhivraj Kanmal ..Respondents

Mr. A. N. Samant for the Appellants in all

the Appeals.

None for the Respondents in all the Appeals.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 6TH MAY, 2005**

**ORAL ORDER :**

1. All these appeals have been filed by the Union of India against the order of RACT, Mumbai. Respondents - Original Claimants in all the matters are different but the issues raised by Mr. Samant are common and therefore, all the appeals are decided by this common order. Nobody appeared for the Respondents in all the matters, though they were served.

2. Mr. Samant contended that railway receipts in all the matters were with an endorsement *"said to contain"* and therefore it was obligatory on the claimants - respondents to prove actual quantity of goods entrusted to the railways and in the absence of that evidence, railway was not liable to pay damages and even if the shortage certificate was issued, the same was of no help. Mr. Samant contended that there was no evidence on record produced or adduced by the claimants, at all in this regard.

3. The second contention was that the Tribunal awarded interest at the rate of 12% per annum and according to him it should be 9% per annum in view of the judgment of this Court reported in **2005 (1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgement earlier, therefore the rate of interest is to be reduced to 9% per annum. Therefore he contended that firstly the appeals should be allowed so far as claim on merits is concerned, or alternatively interest rate should be reduced.

4. Regarding this point of RR with an endorsement *"said to contain",* I am referring the facts in Appeal No. 771 of 1992. In that case the claimants had contended that they had entrusted 244 bags of wheat to the Railways under RR Nos. 105486 and 105487 bearing Invoice Nos. 3 and 4 respectively dated 15.6.1977. Consignment was delivered on 31.8.1977 i.e. after about two and half months after their entrustment and only 144 bags were found to be in good condition and 100 bags were badly damaged by water and the contents were found rotten. They made claim of Rs.9,400.10 paise. Chief Claims Officer, Central Railway settled the claim for Rs.3,315/- and the amount was paid by

cheque. However, when the cheque was received, the claimants informed that they are accepting the cheque of Rs.3,315/- under protest and without prejudice to their rights.

5. The submissions made by Mr. Samant regarding RR being *"said to contain"* do not arise in this matter because assessment of damage was done and railways had accepted their responsibility though partly and had made payment of part of the claim amount. The fact that the goods reached their destination two and half months itself show that it was negligence of the railways.

6. The Tribunal has framed as many as 14 issues. But I do not find any issue being raised by the appellants of the RRs were *"said to contain".* The consignment was booked from Kalyan to Chandausi station. The Tribunal found that the reasonable transit period was 11 days whereas the goods reached destination after lapse of 75 days. There was absolutely no explanation and this was therefore a clear case of total negligence by the railways. The damage certificate was given and it was stated that out of 244 bags of wheat, 144 bags were found in sound condition. 29 bags partly damaged and loose stuff of 71 bags, therefore Tribunal found that 100 bags were received in damage condition. If the Authorities at the end of destination i.e. delivery

point were able to count the bags, assess the damage, then it does not lie in the mouth of the Railways to contend that entrustment of 244 bags was not proved by the respondents. I, therefore, do not agree with Mr, Samant and therefore this contention is required to be rejected.

7. So far as interest part is concerned, contention of Mr. Samant is required to be accepted, in view of the judgment of this court, as stated above.

8. In the result I pass the following order:

**ORDER**

. All the appeals are partly allowed.

. The amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs of all these Appeals.

. All the appeals disposed of along with Civil Applications, if any.

6.05.2005 (D.G. DESHPANDE, J.)